

# Montana State Senate



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*The Big Sky Country*

EXHIBIT 2  
DATE 1/29/15  
HB 272

COMMITTEES:  
AGRICULTURE, LIVESTOCK & IRRIGATION  
JUDICIARY  
PUBLIC HEALTH, WELFARE & SAFETY

January 27, 2015

Re: House Bill 272, the Uniform Collaborative Law Act (UCLA)

House Judiciary Committee  
State Capitol  
Helena, MT

Dear Chair Bennett and Members of the Committee:

I urge your favorable action on H.B. 272.

The Uniform Collaborative Law Act was promulgated by the Uniform Law Commission in 2009, and amended in 2010. It provides a necessary, comprehensive statute to address the growing practice of collaborative law, providing consistency in place of the existing patchwork of laws governing the practice. Collaborative law is a voluntary, client-driven form of alternative dispute resolution practiced in all 50 states. It has been widely used in family law cases, and is beginning to be used in other types of cases, such as insurance disputes or disputes between members of closely held businesses. Its increased use as a dispute resolution mechanism requires there be clear standards, and consistent treatment between the states. The UCLA standardizes the most important features of the collaborative law process, protecting consumers, preventing lawyers from engaging in unethical practices, and creating rules governing the disclosure of information and evidentiary privilege.

There are several reasons to support the Act:

- **Consistency** - The UCLA provides consistency from state to state regarding the enforceability of collaborative law agreements. This consistency is important for parties who may choose collaborative law as a process by which to resolve interstate disputes.
- **Minimum Requirements for Agreements** - The UCLA establishes minimum requirements for collaborative law participation agreements. They must include written agreements that state the parties' intention to resolve their dispute through the collaborative process, a description of the matter, and designate collaborative lawyers.
- **Process Beginning/End** - The UCLA gives specific instruction on when and how the collaborative law process begins and concludes.

- **Clear Disqualification Requirement** - The UCLA codifies the disqualification requirement for collaborative lawyers if the collaborative process concludes. The disqualification requirement is a fundamental characteristic of the collaborative process.
- **Modified Disqualification Rules** - The UCLA modifies the disqualification rule for lawyers representing low income clients or government parties. Specifically, the Act allows legal aid offices, firms providing pro bono services, and law school clinics to continue to represent low income clients even if the collaborative process fails. By modifying the disqualification rule, the Act assures that low income and government parties have access to this form of dispute resolution without detrimentally affecting their future ability to obtain legal services.
- **Screening Requirements** - The UCLA directs lawyers to advise clients about alternatives for dispute resolution (such as litigation, arbitration, and mediation), mandates that the lawyers screen for instances of domestic violence or other coercive behavior, and orders the lawyer to assess with the prospective client whether a collaborative law process is appropriate for the case.
- **Privileged Communications** - The UCLA creates a privilege for communications that occur during the collaborative law process that would otherwise not be available, or would vary when a dispute crosses state lines.

Thank you for your consideration.

Sincerely,



Sen. Nels Swandal  
Senate District 30

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